

Falls Church, Virginia 20530

File: D2012-130

Date: NOV 5 2013

In re: SHERIN THAWER

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF RESPONDENT: Pro se

An Immigration Judge, acting as an Adjudicating Official, issued a final order of discipline on July 26, 2013, amended in a decision mailed on August 1, 2013. The Adjudicating Official suspended the respondent Sherin Thawer from practice before the Immigration Courts, Board of Immigration Appeals, and Department of Homeland Security (the "DHS"), for one year. The respondent filed an appeal with the Board. On September 5, 2013, the DHS filed a "Motion to Dismiss Respondent's Appeal For Lack of Jurisdiction." Thawer has not filed a response to the DHS' motion to dismiss. The DHS' motion will be granted.

The DHS filed a second "Amended Notice of Intent To Discipline" on June 13, 2013. The DHS argued that the respondent is subject to attorney discipline under 8 C.F.R. §§ 1003.102 (c), (n), (o), (p), (q), and (r). The DHS alleged that the respondent failed to provide competent representation to an individual with lawful permanent resident status who engaged the respondent to represent him concerning a naturalization application. The DHS also charged that the respondent did not maintain communication with the individual, did not abide by decisions of the individual, did not act with reasonable diligence in representing a client, knowingly or with reckless disregard made false statements to the DHS, and engaged in conduct prejudicial to the administration of justice. Citing American Bar Association "Standards For Imposing Lawyer Sanctions", the DHS proposed that the respondent be suspended from practice before the DHS for one year.

On June 25, 2013, the Adjudicating Official denied the respondent's motion to terminate, and another pre-hearing conference was scheduled for July 8, 2013. On July 8, 2013, a telephonic pre-hearing conference was held before the Adjudicating Official (Tr. at 77). The respondent's counsel was permitted to withdraw from the case (Tr. at 82). The Adjudicating Official asked the respondent when the parties could meet with a new attorney representing the respondent (Tr. at 94). The respondent replied "I would say three weeks." *Id.* The Adjudicating Official suggested that the next pre-hearing conference therefore take place on July 29, 2013 (Tr. at 95). The respondent stated that she would be out of the country between July 29, 2013, and August 10, 2013. *Id.*¹ The respondent repeated that she would be leaving on July 29, 2013

¹The respondent claims in her brief filed with the Notice of Appeal, at 3, that on July 8, 2013, she "reminded all parties that she had a pre-paid business trip during the time from July 20, 2013, until July 31, 2013." This is contrary to the respondent's actual statements during the conference.

(Tr. at 96). The Adjudicating Official and the parties agreed that a pre-hearing conference would be held on July 26, 2013, at 1pm Central Time (Tr. at 96, 98).

The Adjudicating Official issued a written summary of the July 8, 2013, pre-hearing conference, which was served on the parties. The summary opened with the statement that "[t]he next conference will be on July 26, 2013, at 11am PST, conducted telephonically. This will be at 1:00 pm CST". The July 8, 2013, order also stated that the hearing would take place on September 23, 2013, in Dallas, Texas (Tr. at 94, 97-98).

On July 26, 2013, the Adjudicating Official called the respondent at her office at 1 pm Central time, and was told by an "assistant attorney" that the respondent was not in the office that day (Tr. at 100). The Adjudicating Official also called the respondent's cell phone, but the respondent did not answer the phone (Tr. at 103).

The Adjudicating Official stated for the record that the court administrator had emailed the respondent several times, but received emails saying that the respondent would be out of the office from July 20, 2013, until July 31, 2013 (Tr. at 104). The court administrator then called the respondent's office and was told that the respondent was on a business trip and would be given a message. *Id.* The court administrator called the respondent's cell phone but it was not answered. *Id.* The date of the hearing, July 26, 2013, the court administrator received calls from a person named William, who said that he was from the respondent's law office. *Id.* William first told the court administrator that the respondent was out of the country and would not be attending the July 26, 2013, pre-hearing conference. *Id.* William then told the court administrator that the respondent was having travel problems and would not appear for the status conference. *Id.*

After the respondent failed to appear for the scheduled July 26, 2013, pre-hearing conference, and pursuant to an oral motion of the DHS, Tr. at 105, the Adjudicating Official issued a decision under 8 C.F.R. § 1003.106(a)(3)(2013). This regulatory provision concerns a situation where a practitioner requests a hearing concerning disciplinary charges, but fails to appear. The regulation states

If the practitioner requests a hearing as provided in section 1003.105(c)(3) but fails to appear, the adjudicating official shall then proceed and decide the case in the absence of the practitioner, in accordance with paragraph (b) of this section, based upon the available record, including any additional evidence or arguments presented by the counsel for the government at the hearing. In such a proceeding, the counsel for the government shall submit to the adjudicating official proof of service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner shall be precluded thereafter from participating further in the proceedings.

The regulation goes on to set out how a practitioner may challenge a decision reached under the regulation:

A final order of discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner may file a motion to set aside the order, with service of such motion on the counsel for the government, provided:

- (i) Such a motion is filed within 15 days of the date of issuance of the final order; and
- (ii) His or her failure to appear was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

As the respondent failed to appear for the July 26, 2013, pre-hearing conference, the Adjudicating Official deemed her request for a hearing to have been abandoned, sustained the charges in the amended Notice of Intent to Discipline based on the documentation submitted by the DHS, and ordered the respondent suspended for one year before the Immigration Courts, Board of Immigration Appeals, and DHS. 8 C.F.R. § 1003.106(a)(3)(2013).

In its "Motion to Dismiss Respondent's Appeal For Lack of Jurisdiction", the DHS argues that (1) during the July 8, 2013, pre-hearing conference, the Adjudicating Official scheduled another pre-hearing conference on July 26, 2013; (2) a summary of the July 8, 2013, pre-hearing conference, noting the upcoming July 26, 2013, pre-hearing conference, was sent by the court administrator and received by the respondent, as it was referenced in her brief; and (3) the respondent did not, between July 8, 2013, and July 26, 2013, notify either the Adjudicating Official, or the DHS counsel, that she would be unable to attend the July 26, 2013, pre-hearing conference. The DHS also argued that, pursuant to 8 C.F.R. § 1003.106(a)(3)(2013), the respondent's only remedy was to file a motion to set aside the order of the Adjudicating Official, within 15 days, but the respondent did not do so.

The DHS' "Motion to Dismiss Respondent's Appeal For Lack of Jurisdiction" is well-taken and, as noted, the respondent has filed no opposition to this motion. The respondent's appeal will, therefore, be dismissed for lack of jurisdiction.

ORDER: The DHS' "Motion to Dismiss Respondent's Appeal For Lack of Jurisdiction" is granted.

FURTHER ORDER: The Immigration Judge's decision suspending the respondent from practice before the Immigration Courts, Board of Immigration Appeals, and DHS, for one year, remains in effect.

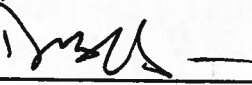
FURTHER ORDER: The respondent's suspension is effective 15 days from this date. 8 C.F.R. § 1003.106(c)(2013).

FURTHER ORDER: The respondent is directed to promptly notify, in writing, any clients with cases currently pending before the Board, the Immigration Courts, or the DHS that the respondent has been suspended from practicing before these bodies.

FURTHER ORDER: The respondent shall maintain records to evidence compliance with this decision.

FURTHER ORDER: The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(2013).



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

In the Matter of:

Case No: D2012-130

THAWER, SHERIN

IN DISCIPLINARY PROCEEDINGS
ON BEHALF OF RESPONDENT

Sherin Thawer
Attorney at Law
305 Cimarron Trail, Suite 160
Irving, Texas 75063

ON BEHALF OF THE GOVERNMENT:

Catherine M. O'Connell
Disciplinary Counsel
Office of the Chief Counsel, USCIS
20 Massachusetts Avenue, NW, Room 4210
Washington, DC 20529

Jennifer J. Barnes
Disciplinary Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

AMENDED ORDER OF THE IMMIGRATION JUDGE

ORDER: It is hereby ordered that:

- ☐ 1. The ground(s) _____ set forth in the Notice of Intent to Discipline have not been established by clear and convincing evidence and are, hereby, dismissed.
- ☒ 2. The ground(s) 8C.F.R. § 292.3(b) set forth in the Notice of Intent to Discipline have been established by clear and convincing evidence.

The following disciplinary sanction shall be imposed:

- ☐ Practitioner shall be permanently disbarred from practice before:
- ☐ The Board of Immigration Appeals and the Immigration Courts
 - ☐ United States Citizenship and Immigration Services
 - ☐ Both

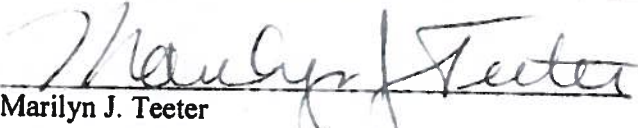
- ☒ Practitioner shall be suspended from practice before:
☐ The Board of Immigration Appeals and the Immigration Courts
☐ United States Citizenship and Immigration Services
☒ Both
Until July 26, 2014 with conditional reinstatement restrictions.

☐ Practitioner shall be publically/privately censured

☐ Other appropriate disciplinary sanction

See Final Order of Discipline attached.

Date: 07/31/2013


Marilyn J. Teeter
Attorney Discipline Adjudicating Officer

APPEAL: WAIVED/RESERVED
APPEAL DUE BY:
EOIR 45

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
FEDEX ☒ (F) TO: ☒ PRACTITIONER ☐ PRACTITIONER'S ATT/REP ☒
DHS/EOIR
DATE: 9/1/2013 BY: COURT STAFF Yom



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

July 8, 2013

Catherine M. O'Connell
Disciplinary Counsel
U.S. Department of Homeland Security, USCIS
111 Massachusetts Avenue, NW, Room 3100
Mail Stop 2121
Washington, DC 20529-2121

Sherin Thawer
Attorney at Law
305 Cimarron Trail, Suite 160
Irving, Texas 75063

In Attorney Discipline Proceedings
RE: SHERIN THAWER
D#2012-130

[X] Attached, please find the decision of the judge issued on July 26, 2013.



MARIA JAUREGUI
COURT ADMINISTRATOR

CERTIFICATE OF SERVICE

The Judge's decision on Case **D#2012-130** was served on the following persons in the manner so noted on this the 26th day of July 2013:

cc:

Catherine M. O'Connell
Disciplinary Counsel
U.S. Department of Homeland Security, USCIS
111 Massachusetts Avenue, NW, Room 3100
Mail Stop 2121
Washington, DC 20529-2121
(Regular Mail)

Sherin Thawer
Attorney at Law
305 Cimarron Trail, Suite 160
Irving, Texas 75063
(Regular Mail)



Maria Jauregui
Court Administrator

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

File No: D2012-130

Date: July 26, 2013

In the Matter of

In Disciplinary
Proceedings

Sherin Thawer

Respondent

RESPONDENT'S ATTORNEY:

DISCIPLINARY COUNSEL:

Pro se

Catherine O'Connell

ORDER

At the prior conference for the above-referenced case, Respondent Thawer agreed to another conference on July 26, 2013 at 11:00 PST. During that prior conference, her attorney's motion to withdraw was granted by IJ Josephson in an *in camera* hearing with Attorney Chapman. Respondent Thawer was granted a continuance of the hearing and a new status conference was set to accommodate her purported travel plans for a three week trip commencing on July 29, 2013.

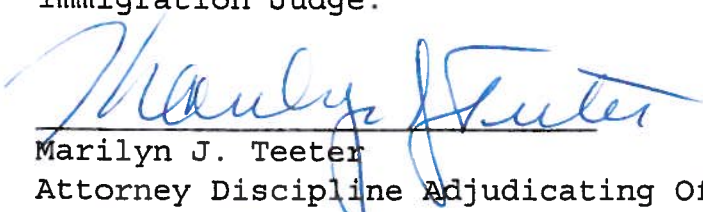
Earlier this week Disciplinary Counsel O'Connell emailed Court Administrator Jauregui and Respondent Thawer see if a call-in conference number would work in lieu of our plans for the court to "conference in" the parties. She received an "Out of Office" email noting that Respondent Thawer would be out of the office from July 20, 2013 to July 31, 2013. She forwarded this to CA Jauregui. CA Jauregui also emailed Respondent Thawer's office and received a similar "out of office" email. CA Jauregui then called Respondent Thawer's office and was told that Thawer was on a business trip and would be given a message. CA Jauregui then called Respondent Thawer's cell phone number which was not answered in person or by voice mail.

This morning, CA Jauregui received two calls (one voice mail and one in person) from a person named William who purported to be from Respondent Thayer's law office. He first informed her that Respondent Thawer was out of the country on a business trip and would not be attending the scheduled conference. On the second call he informed her that Thawer was on a business trip and having travel problems and that she would not be appearing for the status conference. No information was given to him regarding the conference or case since the case cannot be discussed with a third party. The Court notes that the phone number William left does not even share the same area code as Respondent Thawer's office or cell phone numbers. Nonetheless, an 11th hour phone call from a staff member when Respondent has been out of the country for a week is insufficient to mitigate the failure to appear. Several hours after the scheduled conference call, "Bill Gierk" sent a letter by email to CA Jauregui dated July 26, 2013 which states that Thawer "will be out of the office on vacation beginning July 22, 2013 and ending July 28, 2013."

At 11:00am PST this Court commenced calling Respondent's office and cell phone numbers at which the Court was previously able to contact Respondent. Respondent was not available at either number and the DHS Disciplinary Counsel made the motion to have Respondent Thawer's request for a hearing to be deemed abandoned, the allegations to be sustained and Respondent to be suspended. The DHS Motion is hereby granted.

Based upon Respondent Thawer's failure to appear for this conference, the Court hereby deems Respondent's request for a hearing to be abandoned and sustains each and every allegations in the Second Amended Intent to Discipline based upon the documentation submitted. The Court hereby orders a one year immediate suspension of Respondent Thawer's practice both before the DHS and EOIR with conditional reinstatement restrictions.

This case is hereby returned to the Office of the Chief Immigration Judge.


Marilyn J. Teeter
Attorney Discipline Adjudicating Officer